

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the
Southern District of TexasUnited States Courts
Southern District of Texas
FILED

May 13, 2020

David J. Bradley, Clerk of Court

United States of America)

v.)

Jose Abraham NICANOR)
DOB: 10/11/1989)Case No. **4:20mj0828**

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 30, 2018 in the county of Harris in the
Southern District of Texas, the defendant(s) violated:

Code Section

Offense Description

Title 18 U.S.C § 922(g)(1):

Possession of a firearm and ammunition by a prohibited person (a felon)

This criminal complaint is based on these facts:

See attached affidavit.

☒ Continued on the attached sheet.

Complainant's signature

ATF Special Agent Natasha Smith

Printed name and title

Sworn to before me telephonically.

Date: 05/13/2020

Judge's signature

City and state: Houston, TX

Magistrate Judge Frances H. Stacy

Printed name and title

**AFFIDAVIT IN SUPPORT OF
CRIMINAL COMPLAINT**

I, NATASHA H. SMITH, a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent (SA) employed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), United States Department of Justice, and I have been so employed since January 2016. I have a Bachelor's Degree in Criminology from the North Carolina State University, and a Graduate Certificate in Homeland Security from the Pennsylvania State University. I am a graduate of the Federal Law Enforcement Training Center, Criminal Investigator Training Program at Glynco, Georgia. I also graduated from the Bureau of Alcohol, Tobacco, Firearms and Explosives Special Agent Basic Training Course at Glynco, Georgia. I also graduated from the Wake Tech Basic Law Enforcement Training (BLET) Police Academy in North Carolina.

2. As an ATF Special Agent, I have personally conducted multiple complex criminal investigations on a variety of Federal and state criminal statutes; some specifically involving the unlawful possession of firearms by prohibited persons, burglaries and armed robberies of Federal Firearms Licensees (FFL), individuals dealing in firearms without a license, the illegal smuggling of firearms from the US into the country of Mexico, and the possession and distribution of narcotics. During these investigations, I have participated in various types of investigative techniques, including electronic surveillance; undercover agents and informants; and controlled

purchases of firearms from suspects. I have participated in physical surveillance operations and have participated in the execution of state and federal arrest warrants and search warrants.

3. As a result of my training and experience, I have gained knowledge in the utility of undercover agents, confidential informants, physical surveillance, electronic surveillance, Title III wiretaps, consensual recording, investigative interviews, search warrants of social media accounts, mail covers, garbage searches, GPS tracking devices, pole-mounted cameras, the service of Grand Jury subpoenas, courtroom testimony, and the execution of Federal and State search and arrest warrants.

4. By virtue of my training and experience, and through consultation with other Special Agents and officers who have conducted firearm investigations, I have become familiar with the methods used by firearms traffickers to acquire, transport, safeguard, and distribute firearms.

5. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

6. For the reasons stated below, I submit that there is probable cause to believe that Jose Abraham NICANOR (DOB: 10/ /1989) violated the following federal laws:

- a. Possession of a firearm by prohibited person (a felon), in violation of Title 18 U.S.C. § 922(g)(1).
- b. Possession of ammunition by a prohibited person (a felon), in violation of Title 18 U.S.C. § 922(g)(1).

PROBABLE CAUSE

7. On or about May 17, 2019, I gained access to Jose Abraham NICANOR's (hereafter referred to as NICANOR) Instagram account @DON__NICANOR (hereafter referred to as the SUBJECT ACCOUNT). Investigative techniques revealed that NICANOR's phone number is (832) 469-0035, which is linked to the SUBJECT ACCOUNT. Preliminary viewing of the account revealed that NICANOR had posted numerous photos and videos in which he is holding various firearms (both handguns and rifles) between approximately April 2016 and March 2019. The post from March 2019 appeared to be NICANOR shooting a Barrett .50 caliber rifle and has since been removed. The caption on one of the photos of NICANOR shooting a firearm reads "#fuck #a #vest #I #want #headshots."

8. On June 13, 2019, I obtained the Judgement Adjudicating Guilt for case #1002910 in Harris County, TX. The documents show that on August 3, 2007, Jose Abraham NICANOR (SID #: TX07147633) was convicted of Aggravated Robbery—Deadly Weapon, a 1st degree felony, for which he was sentenced to five (5) years confinement in TDCJ.

9. The above conviction resulted from NICANOR's October 4, 2004 arrest for Aggravated Robbery-Deadly Weapon, for which he initially received deferred adjudication. The deferred adjudication was later revoked following NICANOR's June 16, 2007 arrest for Unlawful Carry of a Weapon and NICANOR was convicted of the original felony. ATF Task Force Officer (TFO) Art Mejia provided me with the below booking photos of NICANOR from the aforementioned 2004 and 2007 arrests, as well as and an unrelated arrest from 2018:



2004



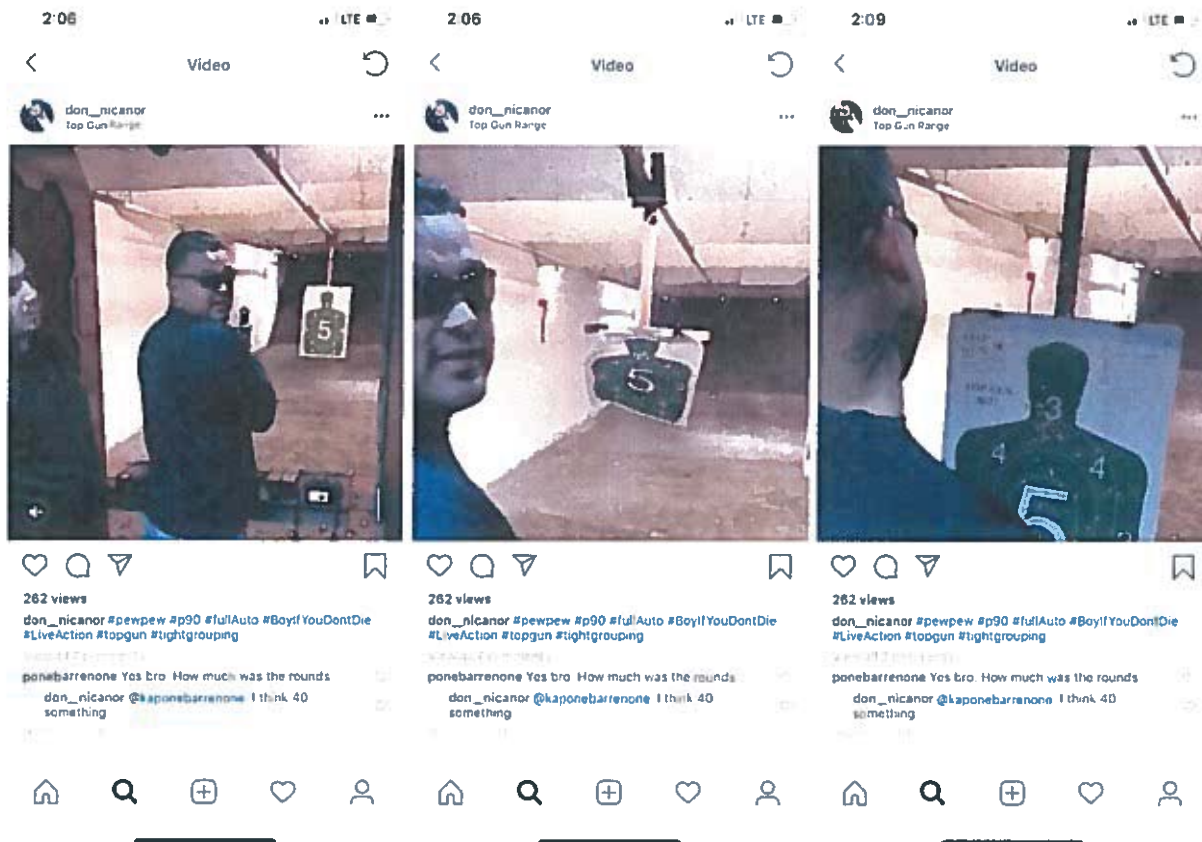
2007



2018

10. On June 24, 2019, I took the below screenshots of a video posted on January 30, 2018, to the SUBJECT ACCOUNT of NICANOR shooting what appears to be a fully automatic

FN P90 rifle. The location of the video is tagged as Top Gun Range, located at 5901 Beverly Hill St., Suite B, Houston, TX 77057.



11. NICANOR has a distinctive “H-Town” tattoo on the right side of his neck which can also be seen in the Instagram video above. All of the above images, as well as NICANOR’s Texas Driver License photo, appear to be one and the same person: NICANOR.

12. On June 11, 2019, I received subpoenaed information from Top Gun Range pertaining to NICANOR’s patronage. The records reflect that on January 30, 2018, NICANOR purchased two (2) boxes of 5.7 x 28mm ammunition, and rented a FN Herstal pistol, model Five-Seven, 5.7 x 28mm caliber, SN: 386320799. NICANOR also paid a pistol range fee and an additional shooter range fee.

13. On July 2, 2019, I received additional information from Top Gun Range which included transaction details for a single purchase on January 30, 2018. The details list two (2) shooters: Jose NICANOR and Edvin Barrios. Also listed in the transaction is the rental of a FN P90 rifle and fifty (50) rounds of 5.7 x 28mm ammunition.

14. On June 18, 2019, ATF SA Ryan Taylor went to Top Gun Range and examined the only FN P90 rifle they have available for rent. SA Taylor determined that the firearm was manufactured outside the state of Texas and therefore had travelled in interstate commerce. SA Taylor also determined that the firearm meets the definition of a machine gun, which is classified as a National Firearms Act (NFA) weapon.


15. On July 3, 2019, SA Taylor returned to Top Gun Range and examined the FN model Five-Seven pistol, 5.7 x 28mm caliber, SN: 386320799, which NICANOR rented from the range on January 30, 2018. SA Taylor determined that the firearm was manufactured outside the state of Texas and therefore had travelled in interstate commerce.

16. On July 24, 2019, I obtained a search warrant, approved by United States Magistrate Judge Nancy Johnson (Case No.: H19-1364M) for information associated with Instagram username @DON__NICANOR. On the same date, I served the search warrant to Instagram, LLC (owned by Facebook).

17. On August 11, 2019, I was notified by Facebook that the records associated with the aforementioned search warrant were ready for download. On August 12, 2019, I downloaded the records. These records contain the aforementioned video of NICANOR shooting what appears to be the FN P90 machine gun at the Top Gun Range which was posted to the SUBJECT ACCOUNT on January 30, 2018. Also contained in the records are numerous other photographs and videos of firearms possessed by NICANOR.

18. On March 13, 2020, SA Taylor returned to Top Gun Range and examined a box of the same ammunition purchased by NICANOR as listed on his receipt from January 30, 2018. SA Taylor determined that the ammunition was manufactured outside the state of Texas and therefore had travelled in interstate commerce.

19. Due to the facts outlined above and to the best my knowledge and belief, all statements made in this affidavit are true and correct. Based on these facts, I believe probable cause exists for the issuance of an arrest warrant for Jose Abraham NICANOR for violations of Title 18 U.S.C § 922(g)(1).


Natasha Smith
Special Agent, ATF

The foregoing affidavit was sworn to telephonically on this 13th day of May, 2020


HONORABLE FRANCES H. STACY
U. S. Magistrate Judge